



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0457]

RIN 1625-AA00

Safety Zone; Lake of the Ozarks MM .5 - 1, approximately 500 feet off the Bagnell Dam, Lake of the Ozarks, MO

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Lake of the Ozarks at mile marker .5 to mile marker 1 approximately 500 feet southwest of the Bagnell Dam. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a series of fireworks displays. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative.

DATES: This rule is effective June 17, 2023, through September 2, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0457 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MSTC Nathaniel Dibley, Sector Upper Mississippi River Waterways

Management Division, U.S. Coast Guard; telephone 314-269-2550, email

Nathaniel.d.dibley@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impractical and contrary to the public interest due to the date the event is taking place. It is impracticable and contrary to the public interest to publish an NPRM because we must establish this safety zone by June 17, 2023, to guard against potential hazards associated with this series of events. Potential safety hazards include the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest due to the date the event is taking place and the need to protect against associated potential hazards. It would be impracticable to wait 30 days after publishing because we

must establish this safety zone by June 17, 2023.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Upper Mississippi River (COTP) has determined that potential hazards associated with Celebrations Cruise fireworks, on June 17, July 1, July 8, July 15, July 22, July 29, August 5, August 19, and September 2, 2023, will be a safety concern for anyone within the fallout zone. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks displays.

IV. Discussion of the Rule

This rule establishes a safety zone from June 17, 2023, through September 2, 2023. The zone will be enforced from 8:45 p.m. until 10:15 p.m. on each of the following days in 2023: June 17, July 1, July 8, July 15, July 22, July 29, August 5, August 19, and September 2. The safety zone will cover all navigable waters within the outlined fallout zone, on the Lake of the Ozarks, between Mile Markers .5 to 1 approximately 500 feet southwest of the Bagnell Dam. The duration of enforcement of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. No vessel or person will be permitted to transit the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits

of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on a series of fireworks displays that impact a one half mile stretch of the Lake of the Ozarks mile marker .5 to mile marker 1 approximately 500 feet southwest of the Bagnell Dam on June 17, July 1, July 8, July 15, July 22, July 29, August 5, August 19, and September 2, 2023 from 8:45 p.m. to 10:15 p.m. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the safety zone, mariners may seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small

Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an

expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will be enforced from 8:45 p.m. to 10:15 p.m. on June 17, July 1, July 8, July 15, July 22, July 29, August 5, August 19, and September 2, 2023, that will prohibit entry on the Lake of the Ozarks between MM .5 to MM 1 approximately 500 feet southwest of the Bagnell Dam. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security Measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS

AREAS.

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T08-0457 to read as follows:

§ 165.T08-0457 Safety Zone[s]; Safety Zone, Lake of the Ozarks, Mile Markers .5-1, Lake of the Ozarks, MO.

(a) *Location.* The following area is a safety zone: all navigable waters of the Lake of the Ozarks at mile marker .5 to mile marker 1 approximately 500 feet southwest of the Bagnell Dam.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of the USCG Sector Upper Mississippi River.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF-FM channel 16, or through USCG Sector Upper Mississippi River at 314-269-2332. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(c) *Enforcement period.* This safety zone will be enforced from 8:45 p.m. to 10:15 p.m. each of the following days in 2023: June 17, July 1, July 8, July 15, July 22, July 29, August 5, August 19, and September 2, 2023.

Dated: May 31, 2023

A.R. Bender,

Captain, U.S. Coast Guard,
Captain of the Port Sector Upper Mississippi River.

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